IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

WENDOLYN PLEASANT and TENANTS' ACTION GROUP	:	CIVIL ACTION
v.	:	
JOSEPH EVERS, PROTHONOTARY, et al.	:	NO. 97-4124

M E M O R A N D U M

Ludwig, J. March 5, 1998

On June 24, 1997 plaintiffs Wendolyn Pleasant and the Tenants' Action Group (TAG) filed this 42 U.S.C. § 1983 action requesting declaratory and injunctive relief[1] and compensatory and punitive damages.[2] The complaint also asks for class certification

[1] Wendolyn Pleasant and TAG are the named plaintiffs in the complaint. The defendants are Joseph Evers — the Prothonotary of the Philadelphia Court of Common Pleas — and Essie Caine. On December 12, 1997 the motion of Renee Sanders to intervene as a plaintiff was granted; on January 14, 1998 the motions of Ben Freeman (Sanders' landlord) and the Apartment Association of Greater Philadelphia to intervene as defendants and the motion of Donna Ray to intervene as a plaintiff were also granted.

Since defendants Essie Caine and Ben Freeman were sued only as the respective landlords of Pleasant and Sanders, the class action will not proceed against them.

[2] No decision is made as to Rule 23(b)(2) class certification on plaintiffs' compensatory and punitive damages claims. See In re School Asbestos Litigation, 798 F.2d 996, 1008 (3d Cir. 1986) (Rule 23(b)(2) certification inappropriate where requested relief relates exclusively to money damages). But see Forbush v. J.C. Penney Company, Inc., 994 F. 2d 1101, 1105 n.3 (5th Cir. 1993) (Rule 23(b)(2) certification does not

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under Rule 23(b)(2), claiming that Philadelphia Municipal Court Rule 124 (PMCR 124) violates due process and equal protection rights under the Fourteenth Amendment to the United States Constitution. See complaint, ¶¶ 17, 48-50. On December 17, 1997 plaintiffs and defendants Joseph Evers, Prothonotary, and the Apartment Association of Greater Philadelphia stipulated to the fact basis for class certification. The certification must be made by order. See Fed. R. Civ. P. 23(c)(1).

"As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained." Id. To obtain such certification, plaintiffs must satisfy the four requirements of Rule 23(a) and at least one part of Rule 23(b). See Fed. R. Civ. P. 23(b); Wetzel v. Liberty Mutual Ins. Co., 508 F.2d 239, 246, 248 (3d Cir.), cert. denied, 421 U.S. 1011, 95 S. Ct. 2415, 44 L. Ed.2d 679 (1975).

The requirements of Rule 23(a)[3] have been met as follows:

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[2](...continued)
automatically preclude money damages where primary relief is injunctive or declaratory) (citing Parker v. Local Union No. 1466, 642 F.2d 104, 107 (5th Cir. 1981)).

[3] Rule 23(a):

> One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the

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Numerosity — The parties stipulated that "the number of class members is so large as to make joinder of their actions impracticable," see stipulation, ¶ 3 — which appears to be factually accurate. Joinder is practicable where a proposed class is very small, or where all members of the class are from the same geographic area, or where class members can be easily identified. See Andrews v. Bechtle Power Corp., 780 F.2d 124, 131-32 (1st Cir. 1985), cert. denied, 476 U.S. 1172, 106 S. Ct. 2896, 90 L. Ed.2d 983 (1986). Here, although all members of the proposed class presumably reside in Philadelphia, the number of potential class members and the difficulty in identifying them suggests that joinder would be unfeasible. Eviction actions are relatively common occurrences, and the lack of an appeal from a Municipal Court eviction proceeding does not necessarily reflect an inability to comply with PMCR 124.

Commonality and Typicality[4] — These two Rule 23(a) prerequisites "do not require that all of the putative class members share identical claims." Hassine v. Jeffes, 846 F.2d 169, 177 (3d Cir. 1988). What is mandated is that "the complainants'

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[3](...continued)
representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a).

[4] "Although Rule 23 establishes these two prerequisites as separate and distinct, the analyses overlap, and therefore these concepts are often discussed together." Hassine v. Jeffes, 846 F.2d 169, 176 n.4 (3d Cir. 1988).

claims be common, and not in conflict." Id. As our Court of Appeals has stated:

> Rule 23 does not require that the representative plaintiff have endured precisely the same injuries that have been sustained by the class members, only that the harm complained of be common to the class, and that the named plaintiff demonstrate a personal interest or "threat of injury . . . [that] is real and immediate, not conjectural or hypothetical.

Id. (citing Eisenberg v. Gagnon, 766 F.2d 770, 786 (3d Cir.), cert. denied sub. nom. Weinstein v. Eisenberg, 474 U.S. 946, 106 S. Ct. 346, 88 L. Ed.2d 290 (1985) (internal quotations and further citations omitted)).

Here, the complaint alleges that plaintiff Pleasant was unable to comply with the requirements of PMCR 124 so as to appeal from an adverse Municipal Court judgment. See complaint, ¶¶ 44-47. She claims an injury[5] common to and not in conflict with the injury allegedly sustained by other members of the proposed class. Her claim therefore satisfies the typicality and commonality requirements of Rule 23(a)(2) and (3).

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[5] A plaintiff has Article III standing to sue if (1) there was an injury in fact; (2) a causal relationship existed between the injury and the challenged conduct; and (3) there is a likelihood that the injury will be redressed by a favorable decision. See Northeastern Fla. Chapter, Associated General Contractors of America v. Jacksonville, 508 U.S. 656, 663, 113 S. Ct. 2297, 2301-02, 124 L. Ed.2d 586 (1993). As a result of Pleasant's inability to comply with PMCR 124, she could not appeal a Municipal Court ruling, and she and her two minor children were threatened with eviction, see complaint, ¶¶ 45-46. Since standing is determined as of the time of the complaint, see Schiaffo v. Helstoski, 492 F.2d 413, 423 (3d Cir. 1974), Pleasant has made out the injury, causation and redressability requirements for Article III standing.

The complaint also avers that plaintiff TAG is a non-profit organization that "assists tenants in exercising their legal rights to insure decent and affordable housing in Philadelphia." Complaint, ¶ 14. For TAG to serve as a representative of the class, "associational standing" must exist. Representative or associational standing exists where (1) the organization's members would have standing to sue in their own right; (2) the interests the organization seeks to protect are germane to its purpose; and (3) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit. See United Food and Commercial Workers Union Local 751 v. Brown Group Inc., 517 U.S. 544, ___, 116 S. Ct. 1529, 1534, 134 L. Ed.2d 758 (1996); see also Public Interest Research Group of New Jersey, Inc. v Magnesium Elektron, Inc., 123 F.3d 111, 119 (3d Cir. 1997).

TAG's purpose is to assist "tenants in exercising their legal rights." See complaint, ¶ 14; see also Statement of Tenants' Action Group, ¶ 6 (stating that TAG has a membership of nearly 1,000 tenants and represents the interests of those members who have been or will be injured by the operation of PMCR 124). Protecting tenants' appellate rights is germane to this organizational purpose. The relief requested here – declaratory and injunctive relief against the enforcement of PMCR 124, see id. ¶ 50 – would not require the participation of individual tenants. TAG's advocacy for Philadelphia tenants obviates any concerns that its claims might conflict with those of potential class members.

As such, it too meets the typicality and commonality requirements of Rule 23(a)(2) and (3).

Adequacy of representation — As decided by our Court of Appeals:

> The inquiry that a court should make regarding the adequacy of representation requisite of Rule 23(a)(4) is to determine that the putative named plaintiff has the ability and the incentive to represent the claims of the class vigorously, that he or she has obtained adequate counsel, and that there is no conflict between the individual's claims and those asserted on behalf of the class.

Hassine v. Jeffes, 846 F.2d 169, 179 (3d Cir. 1988); see also id. (citing Wetzel, 508 F.2d at 247 ("[T]he plaintiff's attorney must be qualified, experienced, and generally able to conduct the proposed litigation . . . and . . . must not have interests antagonistic to those of the class.")).

Here, the parties have stipulated as follows: "Wendolyn Pleasant is committed to obtaining a legal resolution of the issues that she has raised in her complaint in this matter," see stipulation, ¶ 4, and counsel for plaintiffs — all members of Community Legal Services, Inc. — collectively have "more than 70 years combined practice experience . . . much of it spent specializing in federal court, housing and landlord tenant law," see id. ¶ 6. These representations meet Rule 23(a)(4)'s constraint that Pleasant, TAG, and counsel properly represent the proposed class.

Plaintiffs have also complied with the strictures of Rule 23(b)(2): "[T]he party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole." Fed. R. Civ. P. 23(b)(2). To do so, "the putative class must demonstrate that the interests of the class members are so like those of the individual representatives that injustice will not result from their being bound by such judgment in the subsequent application of the principles of res judicata." Hassine, 846 F.2d at 179. Inasmuch as the named plaintiffs and the putative members of the class are pursuing the same result — that tenants not be deprived of their right to appeal from adverse Municipal Court judgments — there does not appear to be much danger of injustice to class members not actually participating in the action. Defendant Evers, as Prothonotary of the Philadelphia Court of Common Pleas, has acted — via PMCR 124 — on grounds generally applicable to the class. Injunctive relief or corresponding declaratory relief as to the class as a whole would therefore be appropriate. Likewise, the Apartment Association of Greater Philadelphia, a landlord trade association, has acted for reasons generally applicable to the class based upon its members' reliance on PMCR 124 in landlord-tenant disputes.

Since all the requirements of Rule 23(a) and (b)(2) have been sufficiently satisfied, this action shall proceed as a class

action for injunctive and declaratory relief. An appropriate order accompanies this memorandum.

Edmund V. Ludwig, J.